

November 25, 2003
DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Jo Ann Estevez

Date of Filing: October 3, 2003

Case Number: TFA-0041

On October 3, 2003, Jo Ann Estevez (Estevez) filed an Appeal from a determination issued to her on September 12, 2003, by the FOIA/Privacy Act Group of the Department of Energy (DOE/HQ) in response to a request for documents that Estevez submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require that DOE/HQ perform an additional search for responsive material.

I. Background

On April 16, 2003, Estevez filed a FOIA request with DOE/HQ for information that pertains to air emissions records and cloud, soot and stack records from the Sylvania Nuclear Facility that was located at Cantiague Rock Road, Hicksville, New York, from 1952 to 1967. This site was also known as the Sylvania Electric Products Inc. Facility. See FOIA Request (November 21, 2001). DOE/HQ assigned the request to the Office of Environment, Safety and Health (EH) and also to the Office of Site Closure in the Office of Environmental Management (EM). Letter from DOE/HQ to Estevez (September 12, 2003) (Determination). On September 12, 2003, DOE/HQ informed Estevez that DOE/EM and DOE/EH were unable to locate any responsive information. Estevez then filed this Appeal. In the Appeal, Estevez challenged the adequacy of the searches and asks OHA to direct DOE/HQ to search again for additional information regarding the Sylvania Nuclear Facility.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85

(8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Milner*, 17 DOE ¶ 80,102 (1988).

DOE/HQ informed us that after assigning the request to EH, EH stated that it had no responsive material, and suggested that the program belonged to EM. Memorandum of Telephone Message from Carolyn Lawson, DOE/HQ (October 24, 2003). EM searched but found no responsive records regarding the Hicksville location. *See* Memorandum from Don Mackenzie, DOE Ohio Office, to J. Boone, EM (September 2, 2003). This office asked EM if any other DOE facility might have responsive records. Electronic Mail Message from Valerie Vance Adeyeye, OHA to Joni Boone, EM (November 3, 2003). EM's Office of Site Closure in Ohio stated that there was a very slight possibility that the Savannah River Office may have some responsive information because Sylvania Corning worked for Savannah River during the 1950s and 1960s. Electronic Mail Message from Don Mackenzie, DOE Ohio Office, to Joni Boone, EM (November 4, 2003). In addition, a contractor discovered three additional documents related to the Sylvania Corning facility in Hicksville, New York, that were not included in the "site specific file" for that facility that had been searched previously. Electronic Mail Message from Charles Young, ASE Inc., to Don Mackenzie, DOE/EM (October 30, 2003). The contractor also found a file with two documents relating to the Hicksville site in a collection of "working papers" from the 1960s and 1970s. *Id.* The contractor suggested that these additional documents "may be of particular significance to those who submitted previous requests for information pertaining to the Hicksville operation." *Id.* EM asked that we determine if any of the new documents were responsive to Estevez's request. We discussed the discovery with the requester, who determined that three documents would be responsive to her request, and we forwarded this information to EM. ^{1/} *See* Electronic Mail Message from Valerie Vance Adeyeye, OHA, to Joni Boone, EM (November 4, 2003).

Accordingly, this Appeal is granted in part and this matter is remanded to DOE/HQ to release any additional responsive material to Estevez or to issue a new determination letter justifying the withholding of any information that it redacted from any responsive material it provides to the requester.

^{1/} Estevez concluded that the following documents were responsive to her request: (1) the AEC Annual Report for FY 1953; (2) Decontamination of SYLCOR 293 Area; and (3) May 2, 1973 AEC Letter re: Radiological Cleanup and Site Disposal Actions". Memorandum of Telephone Conversation between Valerie Vance Adeyeye, OHA, and Estevez (November 4, 2003).

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by Jo Ann Estevez on October 3, 2003, OHA Case Number TFA-0041, is hereby granted as set forth in paragraph (2) and denied in all other respects.

(2) This matter is remanded to the FOIA/Privacy Act Group for processing in accordance with the guidance in the Decision above.

(3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: November 25, 2003